

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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THE DEPARTMENT OF REVENUE )  
OF THE STATE OF MONTANA, ) DOCKET NO.: PT-2003-53  
Appellant, )  
-vs- ) FACTUAL BACKGROUND,  
KATHLEEN CURD RAU, ) CONCLUSIONS OF LAW,  
Respondent ) ORDER and OPPORTUNITY  
FOR JUDICIAL REVIEW  
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The above-entitled appeal was heard on April 22, 2004, in Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The Department of Revenue (DOR), represented by Appraiser Randall Kaiser, and assisted by Area Manager Kory Hofland, presented testimony in support of the appeal. Taxpayer, Kathleen Curd Rau, represented herself in opposition to the appeal.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. Testimony was taken from both the Taxpayer

and the Department of Revenue, and exhibits from both parties were received.

**FACTUAL BACKGROUND**

1. Due, proper, and sufficient notice was given of the hearing on this matter, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The subject property is described as follows:  
  
Brady Street Subdivision, Block 1, Lot 4 of Lewis and Clark County, State of Montana. Geocode: 1887-24-2-03-01-0000. Street Address: 2761 Oval "J" Street in Helena, Montana.
3. The 2002 appraised values on the property, after full phase-in, were as follows: land value of \$9,036 and improvements of \$53,764.
4. For tax year 2003 and as a part of implementing the new appraisal cycle, the Department of Revenue appraised the subject land at a value of \$28,121, and the improvements at \$68,979.
5. On July 20, 2003, Taxpayer filed an AB-26 form with the DOR, asking that the subject property be reviewed. The property was reviewed by DOR and the appraised value of

the improvements was reduced to \$61,879. The land value of \$28,121, however, was not changed.

6. The Taxpayer filed an appeal with the Lewis and Clark County Tax Appeal Board on August 13, 2003, requesting the values from the previous appraisal cycle: \$9,036 for the land, and \$53,764 for the improvements.
7. The Lewis and Clark County Tax Appeal Board held its hearing on December 12, 2003, and rendered a decision favorable to Taxpayer, reducing the value of the land to \$15,000. The improvement value as adjusted by the AB-26 process was not changed.
8. From that decision, the Department of Revenue initiated this appeal stating that the proof adduced at the county hearing did not support the decision rendered by the county board.

#### **STATEMENT OF ISSUE**

The issue before the Board is the market value of the subject land as of January 1, 2002, the base appraisal date for the current appraisal cycle.

#### **DOR CONTENTIONS**

As the Appellant in this case, the DOR feels that the values reflected in the new cycle for the land (\$28,121)

are fully justified by reviewing comparable properties in the city of Helena. It does not agree with the reduction in value to \$15,000 adopted by the County Tax Appeal Board.

DOR presented a CALP model in which 16 vacant land sales in the selected "neighborhood" were analyzed during the period from January of 1996 to January 1, 2002.(DOR's Ex. D). This regression analysis found a value of \$3.89 per square foot as an average for the properties in the analysis. Applied to the 7,229 square feet in Taxpayer's lot, this average figure results in a value of \$28,121.

At hearing, DOR presented information from a recent sale of a vacant lot in the immediate neighborhood of Taxpayer. DOR testified that the sale fully supports the value it has assigned to Taxpayer's land. The sale in question, when adjusted for the later time, works out to \$3.90 per square foot. If the \$3.90 per square foot price is applied to Taxpayer's lot of 7,229 square feet, the resulting value is \$28,193, virtually identical to DOR's assigned value of \$28,121.

#### **TAXPAYER'S CONTENTIONS**

Referring to the phased-in values from the previous

appraisal cycle, Taxpayer objects to the 24% increase in the value of her improvements, and the more than 300% increase in the value of her land. However, the increase to her improvements was adjusted through the AB-26 process and is not a part of this appeal. Only the increase in land value, which was reduced by the County Tax Appeal Board, is involved in this appeal. The Taxpayer notes that the full phased-in value of her land at the end of the previous appraisal cycle was \$9,036. She sees no reason that the amount should increase for this appraisal cycle since there has been no significant change in the property or its environs. A noisy and dangerous railroad to the south, and a dusty, unpaved road to the north border her house and the neighborhood. Commercial trucks and other vehicles, she notes, often use the unpaved road, because it is the shortest route to some key locations to the west of Helena. Additionally, Taxpayer and her neighbors were informed in the mid-90's that there were industrial tailings in their neighborhood, and the site has since been designated as a Superfund site. This site is 500 feet from the subject property.

### **BOARD'S DISCUSSION**

The Board is sympathetic to the Taxpayer's statement that the increase in values on her land from one appraisal cycle to the next is quite substantial, going from an appraised value of \$9,036 to \$28,121. However, the duty of the Board is to determine whether the value assigned by DOR for the current appraisal reflects fair market value.

The DOR's primary vehicle for establishing the fair market value of the property is to examine and adjust sales of property that occurred in the period up to January 1, 2002. The results of that study are contained in State's Exhibit D. This is a regression analysis of 16 sales of vacant lots which occurred in "Neighborhood 213" in the City of Helena. While this analysis comes up with a value of \$3.89 per square foot and a land value of \$28,121, the Board was not entirely persuaded by the strength of the evidence. This is because examinations of the actual properties included in "Neighborhood 213" show that they were not exactly comparable. Some were in an entirely different section of town (Beltview), and others were in subdivisions that were much more protected from noise and traffic. None of the 16 sales used in the DOR's neighborhood study were in

the immediate neighborhood of Taxpayer. That is not DOR's fault—it is just a fact of the evidence which is available in any given time period.

The sale that gives the most credence to DOR's land valuation is the sale of a vacant lot in Taxpayer's immediate neighborhood in July of 2003. Time-adjusting this sale back to January 1, 2002 by applying a rate of change of 0.5% a month (as indicated in DOR's regression analysis-Ex.D), the square foot value of the sale property works out \$3.89 per square foot. This gives strong support to the value presented by DOR which, on a square foot basis, works out to \$3.88 per square foot.

However, the Board notes that the sale property is not located directly on Brady Street as Taxpayer's property is, and, at the time of sale, the frontage street for the sale property was paved and had curbing on it. (These amenities have been extended to Taxpayer too, but were not present on the relevant date of January 1, 2002.) Because of this discrepancy the Board feels that a 10% adjustment in value is in order, and will be rounded to reflect a land value of \$25,000.

**CONCLUSIONS OF LAW**

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301 MCA.
2. §15-8-111 MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

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### **ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property land value shall be entered on the tax rolls of Lewis and Clark County by the local Department of Revenue office at the value of \$25,000 for tax year 2003. The decision of the Lewis and Clark County Tax Appeal Board is modified accordingly.

Dated this 2<sup>nd</sup> day of June 2004.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

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GREGORY A. THORNQUIST, Chairman

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JERE ANN NELSON, Member

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JOE R. ROBERTS, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 2nd day of June, 2004, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Ms. Kathleen Curd Rau  
2761 Oval "J" Street  
Helena, Montana 59601

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Department of Revenue  
Mitchell Building  
Helena, MT 59620

Ms. Dorothy Thompson  
Property Tax Assessment  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Mr. Randall Kaiser  
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Lewis and Clark Courthouse  
P.O. Box 1722  
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Mr. Robert Cummins  
Chairperson  
Lewis and Clark County Tax Appeal Board  
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DONNA EUBANK  
Paralegal